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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,942	03/30/2004	James Chyvan Moore	153-2	2919

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EXAMINER

LAYNO, BENJAMIN

ART UNIT PAPER NUMBER

3711

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,942

Applicant(s)

MOORE ET AL.

Examiner

Benjamin H. Layno

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/06/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments in the reply filed 09/06/05, with respect to the Applicant's own invention "Second Chance Blackjack" used in the Examiner's rejection(s) of claims 1-20 under 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Broadnax and Herron et al.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Broadnax.

The patent to Broadnax discloses a Blackjack game having many of the steps recited in claims 1-11 including dealing two cards to each of the players and to a dealer, allowing each player to discard one of the cards that the player has been dealt, if the player pays a fee, see column 2, lines 14-19 and column 3, lines 17-22. The player cannot pay a fee and discard a card if player has a card of a specific rank (e.g. if the first two cards make a pair, the player may split them, but cannot exercise the option to pay a fee and replace a card, column 3, lines 3-4, and see claim 7). After paying the fee and discarding a card, the player is dealt a replacement card. The conventional game of blackjack is then played.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broadnax.

Concerning, claims 12, 17 and 18, in Broadnax game, determining in what situations (e.g. player's first two cards are not a pair, total point value of the player's first two cards is 18 or less, total point value of the player's first two cards is 16 or less, dealer has 21 and player has an Ace or a 10,.....etc.) a player is allowed to place a fee,

discard a card, and receive a replacement card, is considered a casino management decision that is always obvious in the art.

In regard to claim 14-16, Broadnax discloses that the fee paid by the player to discard one card is a fixed percentage (e.g. "place a bet equal to the original bet", col. 2, lines 14-15) of the amount bet by the player. Determining exactly the amount of the Broadnax fee (e.g. equal to the original bet, 10% of the original bet, 20% of the original bet,.....etc.), and determining in what situations the fee is to be refunded to a player, are also considered a casino management decisions that are always obvious in the art.

In regard to claim 19, it is well known and obvious to deal one of the first two cards dealt to a dealer, one card face up and one card face down in order to provide a house advantage.

3. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broadnax as applied to claim 13 above, and further in view of Herron et al.

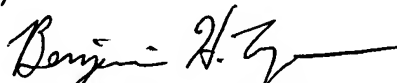
The patent to Herron et al. discloses a blackjack game played similar to Broadnax. Herron et al. teaches that it is known in the blackjack gaming art to provide an electronic video game version of blackjack, Fig. 4, column 5, line 36 to column 6, line 5. In view of such teaching, it would have been obvious to provide an electronic video game version of Broadnax blackjack game in order to attract less experienced blackjack players who are intimidated by table games.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl